**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
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| Policy and Rules Concerning the | ) | |
| Interstate, Interexchange Marketplace | ) | CC Docket No. 96-61 |
| | ) | |
| Implementation of Section 254(g) of the | ) | |
| Communications Act of 1934, as amended | ) | |

# PETITION FOR FURTHER RECONSIDERATION

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## PETITION FOR FURTHER RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, the Telecommunications Management Information Systems Coalition (the "Coalition")[1] and The Utility Reform Network ("TURN")[2] (collectively "Petitioners") hereby submit this Petition for Further Reconsideration ("Petition") of the Commission's Order on Reconsideration released in the above-captioned proceeding on August 20, 1997 ("Reconsideration Order"). Petitioners seek limited reconsideration of the Commission's

[1] The Coalition is composed of three telecommunications management information systems companies and was formed for the purpose of participating in this proceeding. The three companies are Salestar, Center for Communications Management Information ("CCMI"), and Tele-Tech Services ("Tele-Tech").

[2] TURN is a nonprofit organization that advocates on behalf of California's residential and small business customers of telecommunications, electric and gas services. TURN has 30,000 dues-paying members in California. TURN did not participate in the Coalition's initial filings in this proceeding.

*sua sponte* decision to eliminate the public information disclosure requirements for domestic, interstate, interexchange mass market services.

## I. INTRODUCTION AND SUMMARY

In its Second Report and Order in the above-captioned proceeding released on October 31, 1996 ("Second Report and Order"), the Commission adopted mandatory detariffing for domestic, interstate, interexchange services, but imposed a requirement that long distance carriers provide pricing and service information regarding these services to the public upon request.[3] Subsequently, in response to a petition for reconsideration requesting only that the Commission eliminate the information disclosure requirement for individually negotiated service arrangements, the Commission eliminated not only that aspect of the information disclosure requirement, but on its own motion also eliminated the information disclosure requirement for mass market services -- even though no party sought reconsideration of this issue.[4]

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[3] Second Report and Order, 11 FCC Rcd 20730, 20732, 20776 (1996).

[4] Reconsideration Order at ¶ 69. As an initial matter, the Commission's failure to provide adequate notice and opportunity for comment on its unilateral decision to abandon the public disclosure of mass market service information violated the requirements of the Administrative Procedures Act ("APA"). *See Consumer Energy Council of America v. FERC*, 673 F.2d 425, 446 (D.C. Cir. 1982) ("[t]he value of notice and comment prior to repeal of a final rule is that it ensures that an agency will not undo all that it accomplished through its rulemaking without giving all parties an opportunity to comment on the wisdom of repeal.") *aff'd sub nom. Process Gas Consumers Group v. Consumer Energy Council*, 463 U.S. 1216 (1983). Section 553 of the APA requires an agency to provide adequate notice and comment before repealing, as well as promulgating, any rule. 5 U.S.C. § 553.

Although section 1.108 of the Commission's rules permit it to reconsider any action on its own motion within 30 days of public notice, and it is the Commission's practice to toll the 30-day period when a petition for reconsideration is filed, this practice has not been

Petitioners seek reconsideration of the Commission's decision to eliminate the public information disclosure requirement for mass market services on three grounds. *First,* the Commission's decision in the Reconsideration Order to eliminate the information disclosure requirement for mass market services is contrary to the public interest because it will deprive U.S. consumers, particularly small- to medium-sized businesses and residential customers, of access to critical information in making their telecommunications carrier and service selections.

*Second*, the elimination of the public disclosure requirement is arbitrary and capricious because it will impede the Commission's ability to enforce the geographic rate averaging and rate integration provisions of Section 254(g). This complete reversal, accompanied by no explanation and no new evidence in the record to support such a change, is inherently arbitrary and capricious. *Third,* the Reconsideration Order is arbitrary and capricious because, contrary to the Commission's belief, it will do nothing to reduce the risk of tacit price coordination -- if such a risk even exists.

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upheld by any court in the context of a rulemaking proceeding. *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1979) *cert. dismissed sub nom. Cowles Broad. Inc. v. Central Florida Enters., Inc.*, 441 U.S. 957 (1979), upon which the Commission relied in the Reconsideration Order, involved a comparative broadcast hearing where all competing applicants must by necessity be considered simultaneously. Accordingly, although the *Central Florida* court concluded that the tolling practice was "not unreasonable . . . in [that] case" involving a comparative broadcast proceeding, the FCC cannot support, nor has any court ruled on, the validity of this tolling practice in the context of a rulemaking proceeding. To the contrary, section 553 of the APA requires the Commission to provide notice and comment before repealing a rule, and no Commission practice can evade this statutory mandate. Because the Commission did not provide notice and comment before repealing the public disclosure requirement for mass market services, its decision in that regard cannot stand.

## II. THE COMMISSION'S DECISION TO ELIMINATE THE INFORMATION DISCLOSURE REQUIREMENT IS CONTRARY TO THE PUBLIC INTEREST

### A. Absent An Information Disclosure Requirement, Consumers Cannot Obtain Adequate Price Information Essential To Making Informed Decisions Regarding Their Long Distance Carriers

As the Commission correctly acknowledged in its Second Report and Order, "a public disclosure requirement would promote the public interest by making it easier for consumers, including resellers, to compare service offerings and to bring complaints."[5] The Commission, on its own motion, inexplicably abandoned this information disclosure requirement, even though the need for publicly available information regarding interstate long distance services remains.

#### 1. Consumers Need Accurate And Detailed Price Information To Make Informed Decisions Regarding Their Long Distance Carriers

As the Coalition explained in its initial comments in this proceeding, the public availability of rate information is crucial for customers who are trying to make informed decisions about their long distance services providers in the increasingly competitive and complex interexchange marketplace. There are hundreds of long distance carriers which, in turn, offer hundreds, if not thousands, of complex and customized services and plans. In order for residential and business customers to make informed choices among the

[5] Reconsideration Order at ¶ 66 (citing Second Report and Order, 11 FCC Rcd at 20776-77).

myriad of providers, they must be afforded access to detailed and accurate pricing information.[6]

Salestar, one of the Coalition members, recently commissioned a telephone survey of over 1,000 randomly selected individuals nationwide to assess their views on the FCC's decision to eliminate the information disclosure requirement.[7] Survey participants were presented with the following question:

> Recently, the FCC decided phone companies no longer have to provide pricing and service information to the public for long distance service, which will deprive US consumers and small to medium businesses access to critical information for making their phone carrier and service selections.
>
> Are you in favor of, or do you oppose, the federal government's decision which would have the effect of denying you the right to readily access competitive telephone rate and plan information.

Of the 1004 participants surveyed, 85 percent opposed the Commission's decision, 6 percent favored it and 8 percent did not know. These results were roughly consistent

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[6] One source for such information has been the TRAC WebPricer, which is accessible on the Internet. TRAC, the Telecommunications Research & Action Center, is a non-profit organization whose primary goal is to promote the interests of residential telecommunications customers. The WebPricer analyzes and provides information regarding available long distance calling plans for a variety of calling patterns. Based on these examples, consumers who access the site can identify the best long distance calling plan for their needs. In the past few months, the site has been visited by approximately 23,000 individuals. The information provided on the WebPricer currently is obtained primarily from carriers' tariffs. In light of the Commission's mandatory detariffing decision, and absent a public disclosure requirement, this valuable public service likely will cease to be available in its current form.

[7] A report summarizing the results of the survey and discussing survey methodology is attached as Exhibit A.

along gender, age, racial, household income and educational lines. Clearly, the results of this survey demonstrate that consumers want access to more information, not less.

Studies of consumers of other public utilities, such as the electric industry, also have demonstrated consumer need for public information regarding price, terms and conditions of service. In March 1997, the public utility commissioners of six New England states, through the New England Information Disclosure Project ("New England Project"), initiated a comprehensive effort to determine "whether and how uniform consumer information disclosure for the retail sale of electricity might be developed for use throughout the region."[8]

The New England Project identified three goals to be achieved by information disclosure: (1) to allow customers to make the choices they wish to make and thereby achieve customer-preferred outcomes; (2) to enhance customer protection; and (3) to make the electricity market more efficient.[9] The New England Project concluded that the best way to achieve these information goals was through the use of a standardized form containing succinct and easy to understand information regarding price, contract terms, supply mix, emissions and tracking.[10] In addition, the New England Project recommended that carriers provide customers with a document entitled "Terms of

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[8] Tom Austin, David Moskovitz, Cheryl Harrington, *Uniform Consumer Disclosure Standards for New England: Report and Recommendations to the New England Utility Regulatory Commissions*, October 6, 1997 at 1. A copy of the executive summary of report is attached as Exhibit B. Petitioners would be happy to provide a full copy of the report to the Commission or other interested parties upon request.

[9] *Id.*

[10] *Id.*

Service" that would contain detailed information on prices, contract terms, consumer rights, substantiation of marketing claims and environmental impact issues.[11]

The interstate, interexchange service market, with many more competitors with more complex pricing plans than the electric industry, has an even more crucial need for this information. The elimination of the information requirement for mass market services will deprive consumers of the accurate and detailed information that they need to make informed decisions about their long distance services.

### 2. Absent A Public Information Disclosure Requirement, Obtaining Accurate And Detailed Information From Interstate Carriers Will Be Impossible

Salestar also conducted an informal study (in addition to the nationwide survey discussed above) using a number of its telecommunications analysts to determine the degree of difficulty in obtaining directly from a number of long distance carriers sufficient information regarding pricing, terms and conditions to enable Salestar's customers to make informed choices among available service plans.[12] The study also sought to ascertain the level of research necessary to acquire the desired information as well as to identify the obstacles associated with the collection of information.

Overall, Salestar's analysts found it very difficult to obtain detailed and accurate pricing information directly from long distance carriers without reference to tariffs. With very few exceptions, the analysts were only able to obtain price and term information

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[11] *Id.*

[12] The declaration of Kimberly Sierk, a vendor relations specialist at Salestar, who coordinated and oversaw the study is attached as Exhibit C.

about a carrier's long distance plans after making multiple telephone calls and sending multiple e-mails to a variety of different departments at each carrier. When analysts finally were able to connect with the knowledgeable individuals, the information provided was generally cursory and few analysts were able to obtain written documentation to confirm information provided verbally. Some analysts' requests for more detailed information were met by referral to the carrier's tariffs. Other analysts were told that more detailed information was considered proprietary. On multiple occasions, analysts were given conflicting information for identical calling plans.

Information regarding some services, such as basic message toll service for business use, was virtually impossible to obtain. Most carriers demanded a substantial amount of very specific information to rate a call.

These difficulties in obtaining information directly from carriers were encountered by experienced telecommunications analysts trained to obtain such information. Individual consumers, and even small businesses, are not as sophisticated in their knowledge of telecommunications pricing and cannot possibly afford to expend the effort or the resources to ferret out such information. Consumers can only expect to experience increasing difficulty obtaining information in light of the FCC's decision to eliminate the information disclosure requirement for mass market services.

### B. Absent An Information Disclosure Requirement, The FCC Will Be Unable To Enforce The Rate Integration And Rate Averaging Provisions Of Section 254(g) Of The Communications Act

Section 254(g) of the Communications Act requires that domestic, interstate, interexchange rates be geographically averaged and integrated.[13] Specifically, the rates charged to customers in rural and high cost areas can be no higher than those charged to customers in urban areas. In addition, the rates charged to customers in one state can be no higher than the rates charged to customers in another state. The Commission has recognized the important role that the public can play in bringing violations of Section 254(g) to the Commission's attention.[14] In fact, in Commissioner Ness' dissent to the Reconsideration Order's elimination of the public information disclosure requirement, she notes, "I continue to believe that the public disclosure requirement is a *valuable safeguard* that promotes the policies of rate integration and rate averaging codified in Section 254(g). . . ."[15] Absent the public disclosure requirement, however, consumers will have little, if any, access to the information necessary to support these complaints or even, as an initial matter, to determine when such a complaint might be warranted.[16]

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[13] 47 U.S.C. § 254(g).

[14] Second Report and Order at 20776.

[15] Reconsideration Order, Statement of Commissioner Susan Ness Dissenting in Part at 1 (August 14, 1997) (emphasis supplied) ("Dissent of Commissioner Ness").

[16] The decision to eliminate the information disclosure requirement also is troubling in light of the Commission's recent decision to require more rigorous evidentiary showings for formal complaints filed against common carriers. The Commission now requires a complaint "to include full statements of relevant, material facts with supporting affidavits and documentation." *Implementation of the Telecommunications Act of 1996 Amendment of the Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 96-238, FCC No. 97-396 at ¶ 81 (November

If the Commission intends for members of the public to remain the guardians of the complaint process, it must afford them sufficient information to do so. Elimination of the information disclosure requirement works directly contrary to this goal. The Commission should thus reinstate the information disclosure requirement for mass market services to ensure, as Commissioner Ness aptly states, "a higher level of confidence that rate integration and geographic averaging responsibilities will be met."[17]

## III. THE COMMISSION'S DECISION TO ELIMINATE THE INFORMATION DISCLOSURE REQUIREMENT FOR MASS MARKET SERVICES IS ARBITRARY AND CAPRICIOUS

As the courts have made abundantly clear, in order to survive judicial review, Commission action must be based upon "reasoned decisionmaking" supported by a complete factual record.[18] Moreover, before an agency may rescind a regulation, it must explain the "evidence which is available, and must offer a 'rational connection between the facts found and the choice made.'"[19]

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25, 1997). Even assuming a consumer can determine whether a complaint is warranted, absent an information disclosure requirement, it will be highly unlikely that the consumer can support a complaint with the requisite "specific, material facts and [] documentation . . . ." *Id.* The Commission thus has raised the evidentiary bar for consumer complaints at the same time as it has made the gathering of evidence more difficult.

[17] Dissent of Commissioner Ness at 2.

[18] *See Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 52 (1983) ("the agency's explanation . . . is *not* sufficient to enable us to conclude that the [decision] was the product of reasoned decisionmaking"); *Clifton Power Corp. v. FERC,* 88 F.3d 1258, 1265 (D.C. Cir. 1996) (an agency's conclusion of law must be the product of reasoned decisionmaking).

[19] *Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 52 (citation omitted). *See also Competitive Telecomms. Ass'n v. FCC*, 87 F.3d 522, 529 (D.C. Cir. 1996).

As part of its reasoned analysis, an agency must examine relevant data and articulate a satisfactory explanation for its action supporting its modification with record evidence.[20] The agency must take a "hard look" at the issues.[21] When an agency changes its course, its analysis must indicate that its prior policies and standards are being deliberately changed, not casually ignored. If it "glosses over or swerves from prior precedents without discussion, it may cross the line from the tolerably terse to the intolerably mute."[22]

In this instance, the Commission failed to adequately explain the basis for or point to any new evidence supporting the total reversal of its decision regarding disclosure of mass market service arrangements. In addition, the Commission failed to make a "rational connection" between the elimination of the information disclosure requirement and the benefits to be achieved from such an elimination. Because the Commission's decision is arbitrary and capricious in both of these regards, it must be reversed.

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[20] *Omnipoint Corp. v. FCC*, 78 F.3d 620, 632 (D.C. Cir. 1996) (citing *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43). *See also Oxy USA, Inc. v. FERC*, 64 F.3d 679, 694 (D.C. Cir. 1995) (where FERC's judgment is not supported by substantial evidence in the record, it is not considered reasoned decisionmaking).

[21] *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

[22] *Id.* at 852.

### A. The Commission's Recission Of An Information Disclosure Requirement For Mass Market Services Without A Reasoned Explanation And No New Record Evidence Is Arbitrary And Capricious

In its Second Report and Order, the Commission clearly acknowledged that "in competitive markets carriers would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services as required by Section 254(g)."[23] The Commission thus was "persuaded by the arguments of many parties, including numerous state regulatory commissions and consumer groups, that publicly available information is *necessary to ensure that consumers can bring complaints, if necessary, to enforce [the geographic rate averaging and rate integration] requirements.*"[24] Accordingly, the Commission required "nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in an easy to understand format and in a timely manner."[25]

Despite the Commission's recognition that publicly available information is essential to the public's ability to bring Section 254(g) complaints to the Commission's attention, in its Reconsideration Order, it totally reversed field without adequately explaining how consumers can possibly access information it had previously conceded is essential to the public complaint process. As Commissioner Ness recognizes in her dissent to this portion of the Commission's decision, the information disclosure

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[23] Second Report and Order at 20776.

[24] *Id.* (emphasis supplied).

[25] *Id.*

requirement "provides a ready mechanism for consumers to ascertain whether carriers are in fact complying with their obligations under Section 254(g)."[26]

By contrast, the Commission majority speculated that consumers may access requisite price information through "the billing process, information provided by nondominant interexchange carriers to establish a contractual relationship with their customers, notifications required by service contracts or state consumer protection laws, and advertisements and marketing materials."[27] These information sources also were available when the Commission initially adopted a specific public information disclosure requirement, yet the Commission must have deemed such information insufficient to allow consumers to bring complaints to the Commission's attention. The Commission fails to explain how these sources, standing alone, are now sufficient to support the public complaint process.

The Commission pointed to no new information in the record to support its *sua sponte* reversal. In fact, the only new information in the record regarding the information disclosure requirement addressed individually negotiated service arrangements, which the Commission acknowledges, are not subject to Section 254(g). Thus the "disclosure of the rates, terms, and conditions of individually-negotiated service arrangements cannot be justified on the basis of the need to enforce section 254(g)."[28] Mass market service arrangements, on the other hand, are subject to Section 254(g). The Commission's

[26] Dissent of Commissioner Ness at 2.

[27] Reconsideration Order at ¶ 70.

[28] Reconsideration Order at ¶ 68.

reasoning for eliminating the information disclosure requirement with respect to individually negotiated service arrangements cannot, therefore, apply to the elimination of the information disclosure requirement for mass market services.

Moreover, the Commission's contention that carrier certification will provide adequate information for 254(g) enforcement purposes cannot justify its elimination of the information disclosure requirement for mass market services.[29] The Commission fails to explain on reconsideration why it now believes carrier certification sufficiently safeguards Section 254(g)'s requirements when it did not believe such measures were sufficient in the Second Report and Order.[30] Petitioners submit that the Commission was correct the first time when it required information disclosure in addition to a certification requirement.

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[29] In its Reconsideration Order, the Commission reaffirmed its commitment to enforcing the requirements of Section 254(g) by continuing to require nondominant interexchange carriers to file annual certifications stating that they are in compliance with Section 254(g). The Commission also required carriers to maintain certain price and service information on their domestic, interstate, interexchange services that must be made available to the *Commission or a state regulatory authority* upon request. The maintenance of such information cannot, of course, facilitate the Commission's historical reliance on the public to keep vigilant watch over carriers' practices. *See, e.g.,* Second Report & Order at 20733 ("We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers."). Moreover, the Commission does not have sufficient resources to assume the role of being the sole consumer watchdog.

[30] *See* Second Report and Order at 20776 ("While we believe that carrier certifications will be an important mechanism for enforcing the 1996 Act's geographic rate averaging and rate integration requirements, we are persuaded by the arguments of many parties, including numerous state and regulatory commissions and consumer groups, that publicly available information is necessary to ensure that consumers can bring complaints, if necessary, to enforce those requirements.")

The Commission has failed adequately to explain the reasons for the reversal of its decision regarding the information disclosure requirement for mass market services.[31] Accordingly, the Commission's decision to eliminate the information disclosure requirement for mass market services is arbitrary and capricious.

### B. The Commission's Decision To Eliminate The Information Disclosure Requirement For Mass Market Services Does Not Resolve The Commission's Concerns About Price Coordination And Is Therefore Arbitrary And Capricious

Although the Commission states that the market for interstate, domestic, interexchange services is competitive,[32] it nonetheless (and erroneously) claims that elimination of the information disclosure requirement will benefit consumers by decreasing the risk of tacit price coordination.[33] The Commission's concern about price coordination, however, is fundamentally inconsistent with its statement that the market is competitive. Well-established economic principles hold that in a competitive market (such as that for interstate, interexchange telecommunications service) more information assists the market to function in a more competitive manner.[34] Thus, the Commission's

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[31] *See Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 52.

[32] Reconsideration Order at ¶ 66. The Commission has stated on other occasions that the market for domestic, interstate, interexchange services is robustly competitive. *See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier,* 1995 FCC LEXIS 6877 at *30 ("most major segments of the interexchange market are subject to substantial competition today, and the vast majority of interexchange services and transactions are subject to substantial competition").

[33] Reconsideration Order at ¶ 71.

[34] R. Posner, *Antitrust Law: An Economic Perspective* at 65 (1976) ("In a market of many small sellers, the exchange of price information may serve the salutary purpose of

efforts to decrease the amount of available information will do nothing to decrease the (nonexistent) threat of price coordination.[35]

The Antitrust Division of the U.S. Justice Department also has concluded that giving consumers access to accurate pricing information does not increase the risk of tacit collusion between mass market service providers. In a price fixing investigation of eight major airlines and the Airline Tariff Publishing Company ("ATPCO"), a fare clearing house in which each of those airlines had an ownership interest, the Antitrust Division examined whether those airlines had used ATPCO as a means to reach agreements on the prices and terms of fares. Ultimately, the investigation ended when the airlines and ATPCO entered into a consent decree that prohibited them from disseminating pricing information for fares that were not available for sale.[36] Notably, however, the consent decree allowed ATPCO (and the defendant airlines) to continue to disseminate fare

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reducing price dispersions based on inadequate knowledge and thereby improving competition"). *See also id.* at 136 ("In general, the more information sellers have about the prices and output of their competitors the more efficiently the market will operate").

[35] Even if the interstate domestic interexchange market were not competitive and therefore susceptible to tacit price collusion, the Commission concedes that "nondominant interexchange carriers may still be able to obtain information about their competitors' rates and service offerings in the absence of a public disclosure requirement." Reconsideration Order at ¶ 69. Accordingly, to the extent that any competitors in the market have the incentive or inclination to tacitly price collude, these large and sophisticated competitors have the resources to obtain the information necessary to do so despite the Commission's elimination of the information disclosure requirement. The Commission's elimination of the information disclosure requirement thus does little to address any threat of price collusion and at the same time deprives consumers of access to important information.

[36] *United States v. Airline Tariff Publishing Company; Proposed Final Judgment and Competitive Impact Statement*, 58 Fed. Reg. 3971, 3978 (January 12, 1993).

information for fares that were actually available for sale.[37] The danger addressed was the airlines' exchange of fares that were not available for sale; not the exchange of fares that were available for sale.

The ATPCO experience demonstrates that the Commission should not be concerned about allowing consumers access to accurate information concerning prices for mass market services. It is highly unlikely that providers of mass market services would use the disclosure of actual pricing information as a vehicle to coordinate prices. Because the pricing information relates to actual prices, the disclosures would not allow, for example, a provider to obtain advance assurance from competitors that they would follow a price increase. On the other hand, the continued disclosure of price information to consumers will allow consumers to obtain the pricing information that they need to make an informed choice for their provider. Discontinuing the requirement that actual rates be disclosed will not solve a tacit collusion problem because it is a problem that does not exist. The elimination of the requirement will, however, make it much more difficult for consumers to shop for the best rate.

Consumers of mass market services -- specifically residential and small- and medium-sized businesses -- need price information for the valid purpose of making informed choices among the vast array of long distance service providers. Unlike the interexchange carriers, these individuals and entities will not have the resources necessary to obtain relevant price information absent an information disclosure requirement. It is

[37] *Id.*

precisely these consumers who are harmed by the Commission's elimination of the public disclosure rule, without any cognizable benefit to the competitiveness of the market.

Moreover, any risk of collusive pricing is muted by the fact that Sections 201 and 202 of the Communications Act continue to serve as a deterrent to such behavior. Further, in the unlikely event that any collusive pricing were to occur, the federal and state antitrust laws, upon which the Commission consistently has relied, should be available to remedy any misconduct.[38] The FCC's concerns regarding anticompetitive conduct can therefore be addressed through other means.

Because, in a competitive market, the elimination of the information disclosure requirement will not produce the claimed benefit of reducing the risk of tacit price coordination, the Commission's elimination of the requirement was arbitrary and capricious. The Commission should therefore reinstate the information disclosure requirement with respect to mass market services.

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[38] *See, e.g., Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 7 CR 768, 823 (in declining to apply dominant carrier regulation to independent LECs the Commission stated, "we believe that such predatory behavior can be adequately addressed through our complaint process and enforcement of the antitrust laws"); *Reexamination of the Commission's Cross-Interest Policy*, 4 FCC Rcd 2208, 2213 (1989) ("Further reducing our concern . . . are remedies, in the form of federal and state antitrust laws, which may be available to reduce or deter potential anticompetitive consequences . . . We believe that reliance on such alternative forms of deterrence will more effectively serve the public interest . . . ."); *Applications of Craig O. McCaw, Transferor, and American Telephone and Telegraph Company, Transferee, for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and Its Subsidiaries*, 10 FCC Rcd 11786, 11801 (1995) ("should AT&T/McCaw's affiliates engage in predatory pricing, aggrieved parties may seek redress either in the courts under the antitrust laws or through our complaint process . . . .").

## IV. CONCLUSION

For all of these reasons, the Commission should reconsider its arbitrary and capricious decision to eliminate the public information disclosure requirement for mass market interstate, interexchange services. Prompt reinstatement of the information disclosure requirement will serve the public interest by ensuring that consumers have access to accurate and adequate information to make their long distance service choices. In addition, a reinstated information disclosure requirement will provide consumers with sufficient information to identify and bring to the Commission's attention possible violations of the geographic rate averaging and rate integration provisions of Section 254(g) of the Communications Act -- violations that the Commission acknowledges can occur in a competitive market such as this one.

Respectfully submitted,

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December 4, 1997

## CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **PETITION FOR FURTHER RECONSIDERATION** has been furnished, via hand delivery on this 4th day of December, 1997, to the following:

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# PHONE RATE INFORMATION DISCLOSURE

**Prepared For:**

**SALESTAR**

**November 28, 1997**

**OPINION RESEARCH CORPORATION INTERNATIONAL**